IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.GIRI

TUESDAY, THE 21ST AUGUST 2007 / 30TH SRAVANA 1929

OP.No. 20519 of 2000(P)

PETITIONER:

1. AITHAPPA NAIK, S/O. MADU NAIKA, ARTHYA, ADOOR VILLAGE, URDOOR P.O., KASARAGOD.

2. KRISHNA NAIK, S/O. AITHAPPA NAIK, DO. DO.

BY ADV. SMT.P.M.INDU
SRI.K.A.LALAN
SRI.GEORGE SEBASTIAN

RESPONDENTS:

1. THE SPECIAL TAHSILDAR (L.A.), KASARAGOD.

2. THE REVENUE DIVISIONAL OFFICER, KASARAGOD.

3. THE SECRETARY (REVENUE), GOVT. OF KERALA, THIRUVANANTHAPURAM.

4. AMMANI, W/O. RAMOJI, MUGULI ADKA, ADOOR VILLAGE, URDOOR (P.O.), KASARAGOD DT.

5. K. RAMOJI RAO, S/O. SOMOJI RAO, KAYYANNI, ADOOR VILLAGE, URDOOR (P.O.), KASARAGOD DT.

6. A. PRABHAKARA NAIK, S/O. A. KRISHNA NAIK, MANDEBETTU, ADOOR VILLAGE, URDOOR P.O., KASARAGOD.

BY ADV. SRI.M.C.SEN
SRI.M.P.SREEKRISHNAN
SMT.P.K.PAMALA, SMT. SHAHNA KARTHIKEYAN FOR R4 TO R6
GOVERNMENT PLEADER SRI. NOBLE MATHEW FOR R1 TO R3

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 21/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP 20519/00

APPENDIX

PETITIONERS' EXTS.

Ext.P1 true copy of the assignment order dt. 2.2.79 in the name of 4th respondent.

Ext.P2 do. do. of 5th respondent.

Ext.P3 true copy of the appeal dt. 20.11.93 filed by the petitioners before the 2nd respondent.

Ext.P4 true copy of the order dt. 10.11.94 issued by the 2nd respondent.

Ext.P5 true copy of the revision petition dt. 7.12.94 filed by the petitioners before the Board of Revenue, Tvm.

Ext.P6 true copy of the order dt. 25.2.96 issued by the Board of Revenue, Tvm.

Ext.P7 true copy of the revision petition dt. 23.4.96 filed by the petitioners before the 3rd respondent.

Ext.P8 true copy of the order dt. 24.2.98 issued by the 3rd respondent.

4th and 6th respondents Exts:

Ext.R6A true copy of judgment in O.P.No.6081/1994 Y dt. 12.12.1995 of this Hon'ble Court.

Ext.R6B true copy of judgment in O.S.No.536/93 dt. 12.2.96 of the Addl. Munsiff's Court, Kasaragod.

V. Giri, J.

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O.P.No.20519 of 2000

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Dated this the 21st day of August, 2007.

JUDGMENT

Petitioners challenge Exts.P1, P2, P4, P6 and P8 orders issued under the Land Assignment Act. Exts.P1 and P2 are orders of assignment originally issued in favour of respondents 4 and 5. Ext.P1 is dated 2.2.1979 and covers an extent of 3 acres of land in Sy.No.770/4C of Adoor Village, Kasaragod Taluk. Ext.P2 order of assignment which is also dated 2.2.1979 covers another 3 acres of land comprised of 1 acre and 2 cents in Sy.No.769/7B and 1 acre and 98 cents in Sy.No.770/4E of Adoor Village, Kasaragod Taluk. Ext.P2 assignment is in favour of the fifth respondent.

2. Petitioners have properties, obtained by them under the Land Assignment Act, adjacent to the properties covered by Exts.P1 and P2. They challenged Exts.P1 and P2 orders of assignment in a statutory appeal under Rule 22 of the Land Assignment Rules before the Revenue Divisional Officer, vide

Ext.P3. Ext.P3 appeal was rejected by Ext.P4 and the same has been affirmed by the second appellate authority and the revisional authority as per Exts.P6 and P8 orders. Ext.P8 order is dated 24.2.1998 and the writ petition is seen to have been filed on 20.7.2000.

3. One finds it difficult to understand as to why Exts.P1 and P2, which are dated 2.2.1979 were permitted to be challenged before the appellate authority vide Ext.P3 appeal filed on 20.11.1993. A perusal of the records, reveal that the writ petitioners themselves were aware of the orders of assignment and that they were in possession of the photocopies of the orders of assignment. Their contention before the statutory appellate authority was that they were not aware of the contents of the said orders until they were served with the order of injunction passed by the Munsiff in O.S.No.536 of 1993 filed by the sixth respondent. Be that as it may, the statutory appeal was entertained on merits and the appellate authority rejected the appeal. The appellate authority referred to the fact that 2.79 acres of land had been assigned in favour of the first appellant and the second appellant had also been assigned 1.72 acres of

the aforementioned land lying, adjacent to the land forming the subject matter of Exts.P1 and P2. The contention raised by the petitioners to the effect that they had filed applications for assignment of lands covered by Exts.P1 and P2 and their applications were pending when Exts.P1 and P2 orders of assignment were actually passed, were referred to by the appellate authority. The appellate authority found on a perusal of the records that there were no applications filed by the petitioners pending, at the time of the issuance of Exts.P1 and P2.

4. Further contention raised by the petitioners was to the effect that they were in possession of the properties covered by Exts.P1 and P2. There was no evidence to indicate the same. This was also referred to by the appellate authority.

5. The second appellate authority and the revisional authority also considered the contentions raised by the petitioners. There is a concurrent finding that the assignment effected under Exts.P1 and P2 was proper. There were no applications filed by the petitioners pending on the date of the issuance of Exts.P1 and P2 and there is nothing to show that they

were in possession of the properties prior to the date of Exts.P1 and P2 as that they had effected any improvements therein.

6. In the counter affidavit filed on behalf of respondents 4 to 6, reference is made to the fact that in a civil suit instituted by the sixth respondent against the petitioners, there is a finding with regard to possession of the property by the the assignees under Exts.P1 and P2. Thereafter, the sixth respondent was in possession of the properties in question. The decree passed by the civil court as Ext.R6(b) as early as on 12.2.1996 has become final.

7. At this juncture, I am also constrained to take note of the fact that the petitioners have not disclosed in the writ petition the fact that the civil court had passed the decree, Ext.R6(B). There is only a reference to the suit. The petitioners should have disclosed the fact relating to the passing of Ext.R6(B).

8. After hearing learned counsel for the petitioners and learned senior counsel for the contesting respondents as also the learned senior Government Pleader appearing on behalf of respondents 1 to 3, I am of the view that orders mentioned in the writ petition do not suffer from any infirmity. The petitioners

have not made out any case of statutory infraction as regards Exts.P1 and P2 orders of assignment. The appeal filed by them against Exts.P1 and P2 have been considered in accordance with law. There is no violation of any principles of natural justice. The statutory authorities have recorded the finding that no applications, allegedly filed by the petitioners in relation to the lands in question, were pending on the date of Exts.P1 and P2. The petitioners are not able to produce any independent material to substantiate their contention that they were in possession of the property prior to Exts.P1 and P2. The assignees have been found to be in possession of the properties by the civil court in a proceeding to which the petitioners are also parties. The decree of the civil court has become final.

For all these reasons, I find no merit in the writ petition and the same is dismissed, without any order as to costs.

V. Giri,
Judge.

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